

TITLE 329 SOLID WASTE MANAGEMENT BOARD

Proposed Rule LSA Document #09-193

DIGEST

Amends 329 IAC 11-3-1 and adds 329 IAC 11.5 concerning registration, including construction and expansion of a facility, storage and operational requirements, and closure and financial assurance for biomass anaerobic digestion facilities and biomass gasification facilities. Effective 30 days after filing with the Publisher.

HISTORY

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329 IAC 11-3-1; 329 IAC 11-17; 329 IAC 11-18; 329 IAC 11-19; 329 IAC 11-20; 329 IAC 11.5

SECTION 1. 329 IAC 11-3-1 IS AMENDED TO READ AS FOLLOWS:

329 IAC 11-3-1 Exclusions; general

Authority: IC 13-14-8-7; IC 13-15-2-1; IC 13-19-3-1

Affected: IC 13-11-2-245; IC 13-11-2-266; IC 13-18-10; IC 13-19-3-3; IC 13-30-2; IC 36-9-30

Sec. 1. The following solid waste management activities are not subject to the provisions of this article:

(1) Processing and disposing of only uncontaminated:

- (A) rocks;
- (B) bricks;
- (C) concrete;
- (D) road demolition waste materials; or
- (E) dirt.

(2) Land application activities regulated by 327 IAC 6.1 and 327 IAC 7.

(3) Confined feeding ~~control~~ **operation** activities regulated by IC 13-18-10.

(4) Wastewater discharge activities regulated by 327 IAC 5.

(5) Processing of waste when the waste, other than tires, has been segregated from the general MSW stream prior to arrival at a processing facility. To qualify for exclusion from this article, the facility must do the following:

(A) In the regular course of business, receive distinct and recognizable solid waste items that do not require substantial further processing. Substantial further processing includes any thermal or chemical treatment of the waste, as well as physical processing such as shredding, breaking, compacting, or mixing with other materials or waste beyond the processing needed to render the waste more amenable for transport.

(B) Return those items for reuse in manufacturing including any intermediate processing steps before being sent for manufacturing.

(C) Not have more than ten percent (10%) of the solid waste that passes through the facility ultimately taken for final disposal. This is determined by the weight of material passing through the facility in a calendar quarter.

(6) Processing ~~except for incineration~~, of solid waste that takes place at the generating facility.

(7) Processing and disposal of uncontaminated and untreated natural growth solid waste, including the following:

- (A) Tree limbs.

- (B) Stumps.
- (C) Leaves.
- (D) Grass clippings.

(8) The disposal of coal ash, transported by water, into an ash pond that has received a water pollution control facility construction permit under 327 IAC 3.

(9) The operation of surface impoundments; however, the final disposal of solid waste in such facilities at the end of their operation is subject to approval by the commissioner except as excluded under subdivision (8).

(10) Uses and disposal of coal waste as exempted from regulation in IC 13-19-3-3.

(11) The legitimate use of iron and steelmaking slags, including the use as a base for road building, but not including use for land reclamation except as allowed under subdivision (13).

(12) The legitimate use of foundry sand that has been demonstrated as suitable for restricted waste site Type III under the provisions of 329 IAC 10-9, including the use as a base for road building, but not including use for land reclamation except as allowed under subdivision (13).

(13) Solid waste management activities or legitimate uses of solid waste determined by the commissioner to not pose a threat to public health or the environment.

(14) Processing or storage of electronic waste or e-waste, which is any solid waste that is the following or has the following component:

- (A) A circuit board, including a shredded circuit board.
- (B) A diode.
- (C) A CRT.
- (D) A computer.
- (E) An electronic device.

E-waste does not include vehicles, as defined by IC 13-11-2-245, or white goods, as defined by IC 13-11-2-266. Electronic waste is regulated under 329 IAC 16 and must comply with all applicable standards and requirements under 329 IAC 16.

(15) The transfer of closed waste containers meeting the following criteria where the solid waste is not removed from the container:

- (A) The container remains closed.
- (B) The solid waste in the container is only nonmunicipal solid waste.
- (C) The solid waste is stored in the container for not more than ten (10) days.

(16) Biomass anaerobic digestion facilities and biomass gasification facilities that are registered under 329 IAC 11.5.

(17) Any mobile home salvaging operation registered under 329 IAC 11.6.

(18) Any facility that uses industrial process waste or commercial waste as an alternative fuel source and is registered under 329 IAC 11.7.

(19) Crematoriums for human and animal remains.

(20) Burning engineered wood waste as a fuel. As used in this subdivision, "engineered wood", also called composite wood or man-made wood, includes a range of derivative wood products that are manufactured by binding together the strands, particles, fibers, or veneers.

(Solid Waste Management Board; 329 IAC 11-3-1; filed Mar 14, 1996, 5:00 p.m.: 19 IR 1933; readopted filed Jan 10, 2001, 3:25 p.m.: 24 IR 1535; errata filed May 8, 2002, 2:01 p.m.: 25 IR 2741; readopted filed May 14, 2007, 1:53 p.m.: 20070523-IR-329070138BFA; filed Aug 15, 2007, 10:22 a.m.: 20070912-IR-329050181FRA; filed Feb 13, 2008, 1:38 p.m.: 20080312-IR-329050297FRA; filed Jun 28, 2010, 2:11 p.m.: 20100728-IR-329060070FRA)

SECTION 2. 329 IAC 11.5 IS ADDED TO READ AS FOLLOWS:

ARTICLE 11.5. BIOMASS ANAEROBIC DIGESTION FACILITIES AND BIOMASS GASIFICATION FACILITIES

Rule 1. General Provisions

329 IAC 11.5-1-1 Purpose

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-30-2-1; IC 36-9-30-35

Sec. 1. (a) This article regulates biomass anaerobic digestion facilities and biomass gasification facilities through the following:

- (1) Providing for the registration, including construction and expansion, of facilities storing, reusing, or processing biomass or appropriate feedstock for energy production or reusable treated biomass and appropriate feedstock, such as animal bedding.
- (2) Providing standards for storing or processing biomass or appropriate feedstock for energy production or reusable treated biomass and appropriate feedstock, such as animal bedding.
- (3) Providing cleanup and closure standards for facilities that have stored or processed biomass or appropriate feedstock for energy production or reusable treated biomass and appropriate feedstock, such as animal bedding.
- (4) Providing for financial assurance for the cleanup and closure of facilities that have stored or processed biomass or appropriate feedstock for energy production or reusable treated biomass and appropriate feedstock, such as animal bedding.

(b) This article replaces all solid waste processing standards and permitting requirements under 329 IAC 10 and 329 IAC 11 for a facility's use of biomass or appropriate feedstock for energy production or reusable treated biomass and appropriate feedstock, such as animal bedding. This article does not apply to disposal or incineration. *(Solid Waste Management Board; 329 IAC 11.5-1-1)*

329 IAC 11.5-1-2 Applicability

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-30-2; IC 36-9-30

Sec. 2. This article applies to a person doing any of the following:

- (1) Constructing or expanding a biomass anaerobic digestion facility or a biomass gasification facility for recovery of materials or energy.
- (2) Storing biomass or appropriate feedstock for recovery of materials or energy through a biomass anaerobic digestion facility or a biomass gasification facility.
- (3) Processing or reusing a biomass or appropriate feedstock for recovery of materials or energy through a biomass anaerobic digestion facility or a biomass gasification facility.

(Solid Waste Management Board; 329 IAC 11.5-1-2)

329 IAC 11.5-1-3 Severability

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-30-2; IC 36-9-30

Sec. 3. If any provision of this article or the application to any person or circumstance is held invalid, the invalidity shall not affect any other provisions or application of this article that can be given effect without the invalid provision or application. *(Solid Waste Management Board; 329 IAC 11.5-1-3)*

329 IAC 11.5-1-4 Acts prohibited

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-30-2; IC 36-9-30

Sec. 4. No person who owns or operates a facility to which this article applies shall cause or allow the storage, containment, processing, or disposal of biomass and appropriate feedstock in a manner that creates a threat to human health or the environment, including the creation of:

- (1) a fire hazard;
- (2) a vector attraction;
- (3) air, land, or water pollution; or
- (4) other contamination.

(Solid Waste Management Board; 329 IAC 11.5-1-4)

329 IAC 11.5-1-5 Penalties and enforcement

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-14; IC 13-30-2; IC 36-9-30

Sec. 5. Penalties for violation of this article shall be governed by IC 13-14 and IC 13-30. *(Solid Waste Management Board; 329 IAC 11.5-1-5)*

329 IAC 11.5-1-6 Local approvals

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-14; IC 13-30-2; IC 36-9-30

Sec. 6. The registration that is required by this article does not supersede or replace the need to obtain any local approvals. *(Solid Waste Management Board; 329 IAC 11.5-1-6)*

329 IAC 11.5-1-7 Commissioner approval

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-14; IC 13-30-2; IC 36-9-30

Sec. 7. In this article, any approval that is given by the commissioner is based on protection of human health and the environment. *(Solid Waste Management Board; 329 IAC 11.5-1-7)*

Rule 2. Definitions

329 IAC 11.5-2-1 Definitions

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-11-2; IC 13-30-2; IC 36-9-30

Sec. 1. In addition to the definitions in IC 13-11-2 and 329 IAC 11-2 that are applicable, the definitions in this rule apply throughout this article. *(Solid Waste Management Board; 329 IAC 11.5-2-1)*

329 IAC 11.5-2-2 "Appropriate feedstock" defined

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-30-2; IC 36-9-30

Sec. 2. "Appropriate feedstock" means a specific solid waste stream that has been segregated from other solid wastes and that can be successfully processed with other solid waste or products for recovery of materials or energy through a biomass anaerobic digestion facility or a biomass gasification facility. Food waste, cooking oil and grease, livestock operation residues, industrial waste, such as paper pulp, sewage sludge, off-spec or unused animal feed that are nonindustrial waste sources, dried distillers grain, food waste from food manufacturing industry and from food services industry, or pallets are examples of common appropriate feedstocks. *(Solid Waste Management Board; 329 IAC 11.5-2-2)*

329 IAC 11.5-2-3 "Biomass" defined

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-30-2; IC 36-9-30

Sec. 3. "Biomass" means biological material that is available on a renewable recurring basis and is used as a source of renewable energy, including the following:

- (1) Agricultural crops.**
- (2) Agricultural wastes and residues.**
- (3) Wood and wood byproducts, including the following:**

- (A) Wood residue.
- (B) Forest thinning.
- (C) Mill residue wood.
- (4) Animal wastes and byproducts, including manure.
- (5) Aquatic plants.
- (6) Algae.
- (7) Byproducts of processing agricultural crops.

(Solid Waste Management Board; 329 IAC 11.5-2-3)

329 IAC 11.5-2-4 "Biomass anaerobic digestion facility" defined

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-30-2; IC 36-9-30

Sec. 4. "Biomass anaerobic digestion facility" means a facility that incorporates equipment that promotes the decomposition of biomass to simple organics and biogas products in the oxygen free environment of a closed, sealed chamber. The term includes a methane recovery system. *(Solid Waste Management Board; 329 IAC 11.5-2-4)*

329 IAC 11.5-2-5 "Biomass gasification facility" defined

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-30-2; IC 36-9-30

Sec. 5. "Biomass gasification facility" means a facility that incorporates equipment to carry out a thermochemical process that, with little or no oxygen present, converts biomass into a synthesis gas. *(Solid Waste Management Board; 329 IAC 11.5-2-5)*

329 IAC 11.5-2-6 "Closure" defined

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-30-2; IC 36-9-30

Sec. 6. "Closure" means the activities to be completed at the registered facility at the end of biomass and appropriate feedstock acceptance and processing. *(Solid Waste Management Board; 329 IAC 11.5-2-6)*

329 IAC 11.5-2-7 "Contingency action plan" defined

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-30-2; IC 36-9-30

Sec. 7. "Contingency action plan" means a written course of action to be followed for emergency response in the event of an emergency that causes the release of contaminants into the environment or for the method or methods of biomass and appropriate feedstock management or disposal if the facility is unable to operate or process biomass and appropriate feedstock for seventy-two (72) hours or longer. *(Solid Waste Management Board; 329 IAC 11.5-2-7)*

329 IAC 11.5-2-8 "Discard" defined

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-30-2; IC 36-9-30

Sec. 8. "Discard" has the meaning set forth in 329 IAC 11-2-9.8. *(Solid Waste Management Board; 329 IAC 11.5-2-8)*

329 IAC 11.5-2-9 "Disposal" defined

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-11-2-57; IC 13-30-2; IC 36-9-30

Sec. 9. "Disposal" has the meaning set forth in IC 13-11-2-57. For purposes of this article, disposal must meet

the requirements in 329 IAC 11.5-7-1. (*Solid Waste Management Board; 329 IAC 11.5-2-9*)

329 IAC 11.5-2-10 "Financial assurance" defined

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-30-2; IC 36-9-30

Sec. 10. "Financial assurance" means, for purposes of this article, a bond acquired by the owner or operator of the registered facility in an amount sufficient to provide for:

- (1) remediation of contamination at the registered facility; and**
- (2) closure of the registered facility.**

(Solid Waste Management Board; 329 IAC 11.5-2-10)

329 IAC 11.5-2-11 "Generator" defined

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-30-2; IC 36-9-30

Sec. 11. "Generator" means the person that discards biomass or other appropriate feedstock regulated by this article. (*Solid Waste Management Board; 329 IAC 11.5-2-11*)

329 IAC 11.5-2-12 "Household hazardous waste" defined

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-30-2; IC 36-9-30

Sec. 12. "Household hazardous waste" means hazardous waste:

- (1) generated by a household; and**
- (2) exempt from the requirements of the hazardous waste rules at 329 IAC 3.1.**

(Solid Waste Management Board; 329 IAC 11.5-2-12)

329 IAC 11.5-2-13 "Landowner" defined

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-30-2; IC 36-9-30

Sec. 13. "Landowner" means an owner of real property, as described in the recorded deed and the current county or counties plats. For purposes of this article, the term includes the lessee of the land. (*Solid Waste Management Board; 329 IAC 11.5-2-13*)

329 IAC 11.5-2-14 "Operator" defined

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-30-2; IC 36-9-30

Sec. 14. "Operator" means the person responsible for managing and overseeing a facility regulated under this article. (*Solid Waste Management Board; 329 IAC 11.5-2-14*)

329 IAC 11.5-2-15 "Owner" defined

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-30-2; IC 36-9-30

Sec. 15. "Owner" means the person who owns a facility required to register under this article. (*Solid Waste Management Board; 329 IAC 11.5-2-15*)

329 IAC 11.5-2-16 "Registered facility" defined

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-30-2; IC 36-9-30

Sec. 16. "Registered facility" means a:

- (1) storage;**
- (2) processing; or**
- (3) reuse or recovery;**

facility that is registered under this article. *(Solid Waste Management Board; 329 IAC 11.5-2-16)*

329 IAC 11.5-2-17 "Registration" defined

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-30-2; IC 36-9-30

Sec. 17. "Registration" means the notification to, and the approval by, the commissioner regarding the construction, expansion, processing, or storage of biomass or appropriate feedstock for recovery of materials or energy through a biomass anaerobic digestion facility or a biomass gasification facility that:

- (1) meets the requirements for registration; and**
- (2) must register under this article.**

(Solid Waste Management Board; 329 IAC 11.5-2-17)

329 IAC 11.5-2-18 "Residue" defined

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-30-2; IC 36-9-30

Sec. 18. "Residue" means, for purposes of this article, any discarded biomass and appropriate feedstock remaining after storing, reusing, or processing. *(Solid Waste Management Board; 329 IAC 11.5-2-18)*

329 IAC 11.5-2-19 "Speculative accumulation" defined

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-30-2; IC 36-9-30

Sec. 19. "Speculative accumulation" means the storage before processing or reusing of large quantities of biomass or appropriate feedstock without a current outlet for the processed or reused materials. It is a rebuttable presumption that storage of biomass, appropriate feedstock, or residue for more than six (6) months constitutes disposal.

(Solid Waste Management Board; 329 IAC 11.5-2-19)

329 IAC 11.5-2-20 "Storage" defined

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-30-2; IC 36-9-30

Sec. 20. "Storage" means the retention, containment, or accumulation of biomass or appropriate feedstock intended for processing on a temporary basis in such a manner that it does not:

- (1) threaten or potentially threaten human health; or**
- (2) impact or potentially impact the environment.**

The term does not include speculative accumulation. *(Solid Waste Management Board; 329 IAC 11.5-2-20)*

329 IAC 11.5-2-21 "Waste determination" defined

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-30-2; IC 36-9-30

Sec. 21. "Waste determination" means the documented process of determining the qualitative and quantitative nature of a particular waste in order to establish the regulatory status of the waste and determine if the waste must be disposed of under the hazardous waste rules at 329 IAC 3.1, the PCB rules at 329 IAC 4.1, or the solid waste rules at 329 IAC 10. The regulatory status may be determined using either generator knowledge or testing by the methods in 40 CFR 261, Subpart C, or equivalent methods approved under 40 CFR 260.21 to ascertain the following:

(1) The waste is a hazardous waste under 40 CFR 262.11 and is regulated under 329 IAC 3.1 because of the following:

(A) The waste is not excluded from regulation under 40 CFR 261.4.

(B) The waste is a listed waste under 40 CFR 261, Subpart D.

(C) The waste exhibits characteristics specified in 40 CFR 261, Subpart C.

(2) The waste contains regulated amounts of PCBs and is regulated under 329 IAC 4.1.

(3) The waste is a solid waste and can be disposed of under 329 IAC 10.

(4) The waste is a solid waste and can be processed under 329 IAC 11.

***Note:** All federal regulations cited in this section are incorporated by reference as revised July 1, 2008. Sales of the Code of Federal Regulations are handled by the Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954 or online at <http://bookstore.gpo.gov/>. The telephone number for the Superintendent of Documents is (202) 512-1800 or toll-free (866) 512-1800. The incorporated materials are available for public review at the offices of the department of environmental management. (*Solid Waste Management Board; 329 IAC 11.5-2-21*)

Rule 3. Exclusions

329 IAC 11.5-3-1 Exclusions

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-11-2-258; IC 13-30-2; IC 36-9-30

Sec. 1. The following are excluded from regulation under this article:

(1) Facilities that hold a valid permit under 329 IAC 10 or 329 IAC 11 to treat, process, store, or dispose of solid or hazardous wastes that are not described in 329 IAC 11.5-1-2.

(2) A wastewater treatment plant as defined under IC 13-11-2-258 that has a permit as a publicly owned treatment works (POTW) or an industrial treatment works under 327 IAC 5 that has a permit to discharge and does not store solid waste.

(3) Processing, except for digestion or gasification, of uncontaminated and untreated natural growth including sawdust, tree limbs, stumps, leaves, and grass clippings.

(4) Facilities permitted under 329 IAC 3.1 are not required to obtain permits for the storage, treatment, or disposal of nonhazardous solid waste where such solid waste is treated or disposed of as a hazardous waste at the receiving hazardous waste facility.

(5) Wastewater discharge activities regulated by 327 IAC 5.

(6) A biomass anaerobic digestion facility or a biomass gasification facility that is a waste management system under 327 IAC 19-13-2 at a concentrated animal feeding operation (CAFO) or a confined feeding operation (CFO) provided the facility complies with the following:

(A) 329 IAC 11.5-4-1(g).

(B) 329 IAC 11.5-5.

(C) 329 IAC 11.5-6

(D) 329 IAC 11.5-7.

(E) 329 IAC 11.5-8.

(F) 329 IAC 11.5-9, if the facility is accepting appropriate feedstock.

(*Solid Waste Management Board; 329 IAC 11.5-3-1*)

Rule 4. Registration

329 IAC 11.5-4-1 Registration

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 4-21.5-3; IC 13-15-7; IC 13-30-2; IC 36-9-30

Sec. 1. (a) The owners or operators of all facilities described under 329 IAC 11.5-1-2 are required to register, unless excluded under 329 IAC 11.5-3-1. A registration is for a fixed term not to exceed five (5) years. A registration may be renewed in accordance with this section

(b) The registration form must be:

- (1) filled out completely; and**
- (2) submitted to the commissioner in triplicate on a form or in a format provided by the commissioner.**

(c) The commissioner may require the registration to be submitted electronically with an electronic signature. However, at any time a registration may be submitted electronically via electronic media.

(d) The form for renewal of the registration must be submitted to the commissioner at least sixty (60) days before the expiration date of the registration.

(e) The registration must be modified and submitted to the commissioner for approval prior to any of the following:

(1) A change in the following:

- (A) The process at the biomass anaerobic digestion facilities and biomass gasification facility.**
- (B) The location of the biomass anaerobic digestion facilities and biomass gasification facilities.**
- (C) The amounts of biomass or appropriate feedstock specified in subsection (g)(5).**

(2) An expansion to the biomass anaerobic digestion facilities or biomass gasification facilities.

(f) The owner or operator of a facility that would like to accept a biomass or appropriate feedstock that is not currently listed on the facility's approved registration or any acknowledgment letter issued by the commissioner must submit a notification to the commissioner for approval of that biomass or appropriate feedstock and receive an acknowledgment letter before use.

(g) The registration must include the following information:

(1) The name of the owner, operator, and landowner, if different from the registered facility owner.

(2) Addresses and telephone numbers for the owner, operator, and landowner.

(3) The location and address of the facility.

(4) The type of facility.

(5) The type and maximum amounts, in tons, of biomass or appropriate feedstock that are delivered daily and the maximum amounts of biomass, appropriate feedstock, and residues to be stored on-site and the probable duration of storage in days.

(6) Incoming biomass and appropriate feedstock testing and screening procedures to ensure that the registered facility is only receiving biomass and appropriate feedstock that are acceptable and approved for use at this registered facility.

(7) A plot plan that has a scale, including a bar scale, elevations that correlate with U.S. Geological Survey mean sea level data, north arrow, a map legend, facility boundary, roads, drainage ways, and identification on the plot plan of where the biomass, appropriate feedstock, and residues will be stored or processed in:

(A) a building;

(B) containers;

(C) vehicles;

(D) lagoons;

(E) tanks; or

(F) other proposed storage locations subject to approval by the commissioner.

(8) The construction plans and construction material for all areas where biomass, appropriate feedstock, and residues will be:

(A) stored; or

(B) processed.

(9) A detailed description of the:

(A) storage;

(B) handling;

(C) processing;

(D) treatment; and

(E) final disposition;

of the biomass or appropriate feedstock.

(10) The maximum total amount, in tons, of biomass or appropriate feedstock capable of being processed per day.

(11) Other permits from the commissioner for the facility.

(12) The date the facility became operational or will be operational.

(13) A contingency action plan that specifies the following:

(A) An outline of the method or methods of biomass and appropriate feedstock disposal to be implemented if the registered facility is unable to operate or process and there is no more remaining storage capacity for the alternative fuel that has been approved in the registration.

(B) The maximum amounts of biomass, appropriate feedstock, and residues as specified in subdivision (5) at the facility site at any one (1) time.

(C) Emergency response plan for controlling:

(i) fire;

(ii) explosion;

(iii) spills; and

(iv) contamination.

(D) If required, a spill prevention control plan, under Section 311(j)(1)(C) of the Clean Water Act, as amended by the Oil Pollution Act of 1990.

(E) A floor plan of the facility and areas where biomass and appropriate feedstock are stored.

(F) A plot plan of the registered facility. The plot plan must include the information required in subdivision (7).

(G) A United States Geological Service (USGS) map that identifies the facility location and any access roads.

(H) Telephone numbers for the fire department responsible for responding to a fire or emergency at the facility.

(14) A description of any residue, leachate, or wastewater resulting from the processing or storing of biomass or appropriate feedstock. Applicable surface water controls under 327 IAC 15-6 must be specified.

(15) Material handling and housekeeping procedures for the following areas:

(A) Storage.

(B) Biomass and appropriate feedstock processing.

(C) Loading.

(D) Unloading.

(16) The financial assurance documentation required under 329 IAC 11.5-9-1.

(h) The owner or operator must sign and submit the following certification with the registration: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including a fine or imprisonment for a knowing violation. I further certify that I am authorized to submit this information."

(i) The commissioner or a designee may deny, revoke, limit the length of, or place additional conditions on a registration if the commissioner determines one (1) or more of the following:

(1) The commissioner, under IC 13-15-7, has revoked the applicant's previous registration under this article.

(2) The registration form is incomplete.

(3) There is a violation of a requirement of this article or a condition of the registration.

(4) There is a failure to disclose all relevant facts in obtaining a registration under this article.

(5) There is a misrepresentation made in obtaining a registration under this article.

(6) The permittee fails to meet the requirements for a registration.

(7) The permittee fails to correct a condition as agreed to in an agreed order with the department or commissioner's order, or within the time established in the agreed order or commissioner's order, come into compliance with:

(A) the registration;

- (B) this article; or
- (C) both.

(j) The issuance of a registration does not:

- (1) convey any property right of any sort or any exclusive privileges;
- (2) authorize any injury to persons or private property or invasion of other private rights or any infringement of federal, state, or local laws or regulations; or
- (3) preempt any duty to comply with other federal, state, or local requirements.

(k) A registration is not transferable. A new owner or operator:

- (1) must submit a registration form to the commissioner thirty (30) days in advance of taking ownership of the facility; and
- (2) may operate the facility in the interim.

(Solid Waste Management Board; 329 IAC 11.5-4-1)

329 IAC 11.5-4-2 Transition for submitting registration

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-30-2; IC 36-9-30

Sec. 2. (a) All owners or operators of existing facilities that are required to register under this article must submit a registration form within sixty (60) days after the effective date of this article. These facilities may continue to operate unless the registration is denied. All owners and operators with an existing biomass anaerobic digestion facility or a biomass gasification facility that intend to expand the facility must resubmit the registration for approval by the commissioner prior to expanding the facility.

(b) No person that plans a new biomass anaerobic digestion facility or biomass gasification facility that is required to be registered under this article may construct or operate without prior registration approval by the commissioner. *(Solid Waste Management Board; 329 IAC 11.5-4-2)*

Rule 5. Storage Requirements

329 IAC 11.5-5-1 Storage requirements for biomass and appropriate feedstock

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-30-2; IC 36-9-30

Sec. 1. (a) All registered facilities must store biomass and appropriate feedstock, or any residue in a manner that does not threaten human health and protects the environment. The following are examples of adequate storage:

- (1) A building that is weather tight with impervious floor.
- (2) A container capable of being enclosed.
- (3) A completely enclosed vehicle.
- (4) Tanks, lagoons, or other storage, as approved by the commissioner.

(b) Speculative accumulation of biomass and appropriate feedstock is not allowed. Facilities registered under this article must engage in only legitimate reuse or processing as demonstrated by the following:

- (1) The owner or operator of the registered facility must have a plan to reuse or process the biomass, appropriate feedstock, and residue, if applicable, which identifies the:
 - (A) biomass, appropriate feedstock, and residue, if applicable, to be reused or processed; and
 - (B) manner in which the biomass, appropriate feedstock, and residue, if applicable, is intended to be reused or processed.
- (2) Biomass, appropriate feedstock, and residue may be stored for periods exceeding six (6) months if a reason is provided in the registration, such as a contract providing for longer storage.
- (3) The biomass and appropriate feedstock, or any residue is stored in a manner reflecting its value as a commodity and in accordance with this rule.
- (4) The registered facility must maintain records for a period of five (5) years, recorded in a consistent manner

either daily, weekly, or monthly for biomass and appropriate feedstock received by the facility, and biomass and appropriate feedstock processed at the facility, including the following:

- (A) The total amount in estimated tons of biomass and appropriate feedstock received.
 - (B) The total amount in estimated tons of biomass, appropriate feedstock, and residue, if applicable, processed.
 - (C) The total amount in estimated tons of residue shipped from the facility for disposal.
- (5) Shipping papers and manifests as applicable.

(c) Adequate measures must be in place to control fire hazards, and the contingency action plan required under 329 IAC 11.5-4-1(g)(13) must be submitted to the local fire department that services the area. (*Solid Waste Management Board; 329 IAC 11.5-5-1*)

Rule 6. Operational Requirements

329 IAC 11.5-6-1 Operational requirements for processing of biomass and appropriate feedstock

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-30-2; IC 36-9-30

Sec. 1. (a) A facility that processes or stores biomass and appropriate feedstock must have the following:

(1) A sign at least one (1) foot high by two (2) feet wide prominently displayed by the door or entrance to the facility and legibly containing the following information:

- (A) The name of the facility.
- (B) The IDEM registration number.
- (C) The name and telephone number of a designated emergency contact person.

(2) Processing on an impervious surface such as concrete or asphalt with curbs to contain spills. All liquids or leachate must be controlled and collected. Facilities that are registered under this article that are only processing uncontaminated wood are not required to process on a pad.

(3) Adequate measures in place to control fire hazards, and equipment available to control fires. The contingency action plan required under 329 IAC 11.5-4-1(g)(13) must be submitted to the local fire department that services the area.

(4) A telephone, cellular telephone, or radio communication device available when employees are present and the building is in use.

(5) Access control to the facility.

(6) Adequate control of the following:

- (A) Dust.
- (B) Odors.
- (C) Wastewater.
- (D) Vectors.
- (E) Litter.
- (F) Leachate.

(7) Monitoring of incoming biomass and appropriate feedstock. Any biomass and appropriate feedstock that the facility is not permitted or registered to receive for processing must be isolated and removed from the registered facility.

(8) Putrescible biomass and appropriate feedstock that is stored must be fed into the biomass anaerobic digestion facility or biomass gasification facility within seventy-two (72) hours of receipt at the registered facility.

(b) Any container or vehicle that stores biomass or appropriate feedstock that is:

- (1) subject to blowing; or
- (2) a vector attraction;

must be closed at the end of the operating day.

(c) The owner or operator shall record and retain at the registered facility, or in an alternative location

approved by the commissioner, all records, reports, or audits required by this article until certification of closure is deemed adequate by the commissioner under 329 IAC 11.5-8-1(f). The following information must be retained:

- (1) A paper copy or an accessible copy of the electronically submitted registration.
- (2) A contingency action plan as required under 329 IAC 11.5-4-1(g)(13).
- (3) The records required under 329 IAC 11.5-5-1(b)(2).
- (4) The training log required under subsection (f).
- (5) The results of any waste determination tests on the residues generated by the registered facility.

(d) All records required by this article must be furnished as required and made available during normal operating hours for inspection by any officer, employee, or representative of the commissioner.

(e) No hazardous waste that is regulated by 329 IAC 3.1 shall be processed at any registered facility, unless the facility is permitted under 329 IAC 3.1 to process hazardous waste.

(f) Employees must be trained on safety, emergency, and operational procedures for the facility. A training log must be kept at the registered facility for five (5) years stating the following:

- (1) The name of the employee.
- (2) Training topics.
- (3) Hours of training.

(g) The facility, storage area, or vehicle storing biomass and appropriate feedstock, or any residue must:

- (1) have access controls in place, such as a locked door, twenty-four (24) hour security, or fence with locked gate; and
- (2) be secured during nonbusiness hours.

(h) The land, building, vehicles, and containers must be maintained clean and free of biomass, appropriate feedstock, residues, other than in designated storage areas.

(i) Storage, including the retention, containment, or accumulation of biomass, appropriate feedstock, and residue, on a temporary basis must be done in such a manner that it does not:

- (1) threaten or potentially threaten human health; or
- (2) impact or potentially impact the environment.

It is a rebuttable presumption that storage of biomass and appropriate feedstock, or any residue for more than six (6) months constitutes discarding and disposal. (*Solid Waste Management Board; 329 IAC 11.5-6-1*)

Rule 7. Disposal

329 IAC 11.5-7-1 Disposal and end use

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-30-2; IC 36-9-30

Sec. 1. (a) Persons, generators, owners, or operators disposing of biomass, appropriate feedstock, or residue must make a waste determination and dispose as applicable at either of the following:

- (1) A facility permitted in Indiana under the following:
 - (A) 329 IAC 3.1.
 - (B) 329 IAC 4.1.
 - (C) 329 IAC 10.
 - (D) Incinerators permitted under 329 IAC 11.
 - (E) 329 IAC 13.
- (2) A facility out of state.

(b) Biomass, appropriate feedstock, or residue may require a:

- (1) land application permit if land applying; or

(2) beneficial use approval.

(Solid Waste Management Board; 329 IAC 11.5-7-1)

Rule 8. Closure

329 IAC 11.5-8-1 Closure

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-25-5-8.5; IC 13-30-2; IC 36-9-30

Sec. 1. (a) The owner or operator must notify the commissioner in writing at least fourteen (14) days before the date when the registered facility permanently ceases accepting biomass or appropriate feedstock.

(b) All biomass, appropriate feedstock, and residue must be:

(1) removed from the:

(A) building;

(B) containers;

(C) storage areas;

(D) lagoons;

(E) tanks; and

(F) vehicles; and

(2) disposed of according to 329 IAC 11.5-7-1;

within sixty (60) days of the registered facility no longer accepting biomass and appropriate feedstock. Facilities that have a confined feeding operation (CFO) approval or a concentrated animal feeding operation (CAFO) permit and that cease processing biomass are required to comply with that permit or approval.

(c) Any contaminants resulting from the storage or processing of biomass, appropriate feedstock or residue that are above risk based standards under IC 13-25-5-8.5 must be contained, removed and disposed of according to 329 IAC 11.5-7-1. This requirement does not include any contaminants that the owner or operator can demonstrate were existing before the storage or processing of biomass or appropriate feedstock.

(d) A registered facility must be certified closed under subsection (e) after all biomass, appropriate feedstock, and residue are removed and disposed.

(e) The owner or operator must send a certification statement indicating that the requirements of this section have been met to the commissioner within thirty (30) days after completion of the closure.

(f) After the closure certification is deemed adequate by the commissioner, the owner or operator of the registered facility is released from the obligation of maintaining closure financial assurance. *(Solid Waste Management Board; 329 IAC 11.5-8-1)*

Rule 9. Financial Assurance

329 IAC 11.5-9-1 Financial assurance for cleanup and closure

Authority: IC 13-14-8-7; IC 13-15; IC 13-19-3

Affected: IC 13-14; IC 13-30-2; IC 36-9-30

Sec. 1. (a) All owners or operators that are required to register under this article shall establish financial assurance for closure of the registered facility. Facilities that have a confined feeding operation (CFO) approval or a concentrated animal feeding operation (CAFO) permit and that are processing biomass are exempt from the requirement to obtain financial assurance on any biomass. The financial assurance must be provided as a surety bond as specified in subsection (c) in the amount that will provide for closure of the registered facility in the event the owner or operator has failed to close the registered facility.

(b) The amount that will provide for closure is determined by the maximum amount in tons of biomass, appropriate feedstock, and residue that may be stored at the facility at one (1) time, multiplied by thirty dollars (\$30).

(c) The surety bond is established as follows:

(1) On forms:

(A) provided by the commissioner; or

(B) as approved by the commissioner.

(2) All surety bonds must contain the following:

(A) The establishment of minimum bond amount determined by subsection (b).

(B) Provision that the surety will place the amount that will provide for closure into a standby trust fund, as directed by the commissioner, upon notice from the commissioner that the owner or operator has failed to close the facility under the requirements of 329 IAC 11.5-8-1.

(C) Provision that the surety may not cancel the bond without first sending notice of cancellation by certified mail to the owner or operator and the commissioner at least one hundred twenty (120) days before the effective date of the cancellation.

(D) Provision that the owner or operator may not terminate the bond without prior written authorization by the commissioner.

(3) The surety company issuing the bond must be:

(A) among those listed as acceptable sureties for federal bonds in Circular 570 of the United States Department of the Treasury; and

(B) authorized to do business in Indiana.

(4) The surety will not be liable for deficiencies in the performance of closure by the owner or operator after the closure certification is deemed adequate by the commissioner.

(5) The owner or operator shall establish a standby trust fund to be utilized in the event the owner or operator fails to fulfill closure obligations and the bond guarantee is exercised. Such trust fund must be established in accordance with the following:

(A) On forms provided by the commissioner or forms as approved by the commissioner.

(B) The establishment of a standby trust fund in the amount determined by subsection (b) for commissioner-approved work done to close the facility.

(C) The requirement of successor trustees to notify the commissioner, in writing, of their appointment at least ten (10) days prior to the appointment becoming effective.

(D) The requirement that the funded trust is irrevocable unless terminated in writing by the commissioner.

(E) The requirement that all signatures be notarized by a notary public commissioned to be a notary public in the state of Indiana at the time of notarization.

(F) The requirement that the trustee is authorized to act as a trustee and is an entity whose operations are regulated and examined by a federal agency and a state of Indiana agency.

(d) The owner or operator may use a single surety bond to meet the requirements for more than one (1) facility. Evidence of financial assurance submitted to the commissioner must include a list showing, for each facility, the following:

(1) The IDEM registration number, name, and address.

(2) The amount of funds available through the surety bond that must be not less than the sum of funds that would be available if a separate surety bond had been established and maintained for each facility.

(e) An owner or operator shall do the following:

(1) Notify the commissioner by certified mail within ten (10) days from commencement of a voluntary or involuntary proceeding under bankruptcy under 11 U.S.C. 101 et seq., naming the owner or operator as debtor. An owner or operator who has a surety bond shall be deemed to be without the required financial assurance in the event of bankruptcy of the institution issuing the surety bond.

(2) Reestablish financial assurance within sixty (60) days after such an event. The registered facility cannot operate outside the sixty (60) day period without establishing a surety bond for the amount required under subsection (b).

(f) In addition to any other penalties provided for in this article or in IC 13-14 and IC 13-30, any failure to

obtain, maintain, or fund financial assurance as required by this rule within the prescribed time limits shall be grounds for a proceeding to revoke the facility's registration or to order final closure of the registered facility.

(g) After the closure certification is deemed adequate by the commissioner, the owner or operator of the registered facility is released from the obligation of maintaining financial assurance under this article. (*Solid Waste Management Board; 329 IAC 11.5-9-1*)

SECTION 3. THE FOLLOWING ARE REPEALED: 329 IAC 11-17; 329 IAC 11-18; 329 IAC 11-19; 329 IAC 11-20.

Notice of Public Hearing